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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,) No. CR 08-00088-JW
14 Plaintiff,)
15 v.) UNITED STATES' SENTENCING
16 JOHN ROGER LAGACE) MEMORANDUM
a/k/a BRANDON DRAPER,)
17 Defendant.) Date: September 15, 2008
Time: 1:30 p.m.
18 _____)

19 INTRODUCTION

20 The United States hereby submits its sentencing memorandum in the above-referenced case.
21 On February 21, 2008, before Magistrate Judge Trumbull, Mr. Lagace pled not guilty following
22 arraignment on a three-count information charging him with one count of conspiracy to
23 distribute 27 grams and more of lysergic acid diethylamide (hereinafter referred to as "LSD") in
24 violation of 21 U.S.C. § 846. On April 29, 2008, before this court, Mr. Lagace changed his plea
25 and pled guilty to count two of the information pursuant to a binding plea agreement. Mr.
26 Lagace is scheduled to be sentenced on September 15, 2008. The government agrees with
27 Probation Officer Aylin Raya's guideline calculation and sentencing recommendation of 120
28 months imprisonment.

UNITED STATES' SENTENCING MEMORANDUM
CR CASE # 08-00088-JW

1 **SENTENCING GUIDELINES CALCULATION**

2 Pursuant to the United States Sentencing Guidelines (“USSG”), which are advisory after the
3 Supreme Court’s decision in United States v. Booker, 125 S.Ct. 738 (2005), and due to the type
4 and quantity of drugs the defendant possessed (27 grams of LSD), his base offense level is 32.
5 [PSR 7. USSG § 2D1.1(c)(4)] Pursuant to U.S.S.G. §§ 3E1.1(a) and (b), Acceptance of
6 Responsibility, the defendant is eligible for a downward adjustment of three levels, resulting in
7 an adjusted offense level of 29. [PSR 7.] In the plea agreement, the parties agreed to this
8 adjusted offense level. Furthermore, in the plea agreement, the parties recognize and agree to the
9 application of the statutory mandatory minimum sentence of 120 months in custody.

10 The government and the Probation Officer calculate that the defendant has six criminal
11 history points, and therefore, falls into Criminal History Category III. [PSR 8.] An adjusted
12 offense level of 29 when indexed with a Criminal History Category of III yields a guideline
13 range of 108-135 months imprisonment. Once again, under 21 U.S.C. § 841(b)(1)(A)(v), the
14 mandatory minimum sentence of 120 months applies in this case. Therefore, this defendant must
15 receive, at least, at sentence at the middle of his guideline range. Probation Officer Raya
16 recommends a sentence of 120 months imprisonment and a \$100 special assessment. [PSR
17 Addendum.] Probation Officer Raya also recommends that the defendant be placed on
18 supervised release for ten years and that no restitution be imposed. [PSR Addendum.]

19 The government has reviewed the presentence report and has no objection to the factual
20 information contained therein. The government agrees with Probation Officer Raya’s guideline
21 calculation, and agrees that a reasonable and just sentence in this case would be the sentence
22 stipulated to in the plea agreement, that is, at the mandatory minimum level of 120 months in
23 custody.

24 **THE GOVERNMENT’S SENTENCING RECOMMENDATION**

25 The government recommends that the defendant be sentenced to the applicable mandatory
26 minimum term of imprisonment of 120 months in custody, the minimum term of supervised
27 release of 10 years, no fine, and a \$100 special assessment. Also, the defendant consented to the
28 forfeiture of specified property in paragraph 10 of his plea agreement.

First, this defendant possessed a substantial quantity of LSD. According to the DEA, one gram of crystal LSD may produce 1,000 individual doses. Therefore, this defendant possessed roughly 27,000 individual dosage units of LSD.

The drugs possessed by the defendant, in particular, the quantity of LSD, had the potential to impact a significant portion of the community. Furthermore, the defendant possessed the LSD along with various other controlled substances [e.g dimethyltryptamine (DMT) and hashish], in a home in which his five year-old child resided. The defendant ignored the risks posed to his daughter through accessible dangerous substances.

Finally, the defendant’s past criminal conduct includes two prior drug possession convictions and an active warrant for failing to appear in San Diego, CA. As discussed in the PSR, the defendant’s criminal history prevents him from seeking relief from the mandatory minimum sentence under the “safety valve” provisions of the U.S. Sentencing Guidelines § 5C1.2(a)(1)-(5). Even more, the defendant’s criminal history demonstrates his consistent and ongoing disregard of laws. As the PSR notes, it appears the defendant has supported himself for many years through drug sales. Throughout this time, the defendant demonstrated his contempt for law enforcement. Imposition of the mandatory minimum term of imprisonment in this case is just and reasonable.

DATED: September 8, 2008

Respectfully submitted,

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United States Attorney

/s/
JEFFREY B. SCHENK
Assistant United States Attorney